STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY	:	
	:	
Petition to implement a competitive procurement process by establishing Rider CPP, Rider PPO-MVM, Rider TS-CPP and revising Rider PPO-MI	:	**Docket No. 05-0159**

DRAFT ORDER
OF
THE BUILDING OWNERS AND MANAGERS ASSOCIATION OF CHICAGO

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DATE: October 14, 2005

Now comes the BUILDING OWNERS AND MANAGERS ASSOCIATION OF CHICAGO ("BOMA"), by its attorneys GIORDANO & NEILAN, LTD., and hereby files its Draft Order in this proceeding pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission (the "Commission" or "ICC"). BOMA urges the Commission to address the issues discussed below in the manner set forth in this Draft Order and grant the relief requested by BOMA in the finding and ordering paragraphs of this Draft Order.

By the Commission:

V. AUCTION DESIGN ISSUES

D. CLEARING PRICE: UNIFORM VS. PAY AS BID

ComEd Proposal

Commonwealth Edison Company ("ComEd") has proposed a descending clock auction which uses a uniform, "market clearing" price approach to procure ComEd's entire requirements for electricity supply beginning January 1, 2007. (ComEd Ex. 4.0, pp. 42-43, ll. 990-998). ComEd's uniform, "market clearing" price approach would pay all winning suppliers the same price. (ComEd Ex. 19.3, pg. 8, pp. 45-46; ComEd Rev. Ex. 11.0, pg. 65, ll. 1522-1525). Under ComEd's auction proposal, bidders would first be asked to supply power at a relatively high price at which an oversupply of power would be expected to be bid. (ComEd Rev. Ex. 11.0, pg. 81, ll. 1914-1920; pg. 26, ll. 621-622). The auction price would then "tick down" until the amount of supply offered no longer exceeded ComEd's full electricity supply requirements. (ComEd Ex. 19.3, pg. 8; ComEd Rev. Ex. 11.0, pg. 26, ll. 623-625). At that point, the auction would be stopped and all remaining bidders would be paid the uniform, "market clearing" price at which the auction was ended.[1] (ComEd Ex. 19.3, pp. 45-46; ComEd Ex. 8.0, pg.4, ll. 81-84; ComEd Rev. Ex. 11.0, pg. 65, ll. 1524-1525). Under ComEd's proposed approach, bidders would be informed of the amount of excess supply being bid into the auction during rounds of the auction. (ComEd Ex. 4.0, pg. 26, ll. 613-615; pg. 44, ll. 1027-1029; ComEd Rev. Ex. 11.0, pg. 27, ll. 645-647; ComEd Ex. 19.3, pp. 27-28).

BOMA Proposal

The only party to propose an alternative approach to ComEd's proposed uniform, "market clearing" price auction is the Building Owners and Managers Association of Chicago ("BOMA"). BOMA sponsored the testimony of economist Dr. Arthur B. Laffer, who recommended that ComEd's proposed auction procurement process be changed from a descending clock, uniform price format to a descending clock, pay as bid approach. The four features of Dr. Laffer's proposed descending clock, pay as bid auction proposal which differ from ComEd's proposed descending clock, uniform price approach are the following:

- Instead of stopping the auction when the amount of electricity supply offered by bidders equals ComEd's full electricity supply requirements, bidders would not be informed when the electricity supply was equivalent to ComEd's requirements, and prices would continue to tick down lower until there remained no bidder willing to

[1] If the amount of electricity supply offered by bidders in the last round in ComEd's uniform price approach is less than ComEd's full requirements, then the price reverts back to a higher priced prior round (the "exit price") and all bids are accepted to meet ComEd's requirements at the "exit price."

supply electricity at a lower price. (BOMA Ex. 1.0, pg. 11, ll. 249-252; ComEd Tr. pg. 392, ln. 19 to pg. 393, ln. 10).

- Bidders would not be prohibited from rebidding tranches of electricity supply that bidders had previously withdrawn in later, lower-priced rounds. (BOMA Ex. 3.0, pg. 2, ll. 42-45; pg. 3, ll. 60-63; pg. 20, ll. 4470-471).

- Bidders would not be provided with round-to-round information on excess supply remaining in the auction. (BOMA Ex. 1.0, pp. 13-15, ll. 302-334; BOMA Ex. 3.0, pg. 5, ll. 94-104)

- The tick-down in price from round to round would be made in equal decrements rather than being based on the excess supply remaining in the auction as ComEd has proposed. (BOMA Ex. 3.0, pg. 6, ll. 126-136).

When Dr. Laffer's proposed descending clock, pay as bid auction is completed, bids would be accepted in ascending order of price until ComEd's full requirements were filled. (BOMA Ex. 1.0, pg. 1, ll. 17-22; pg. 11, ll. 254-256; BOMA Ex. 3.0, pg. 7, ll. 146-154; BOMA Ex. 3.1). Each bid accepted would be at the lowest price at which the bidder was willing to sell electricity to ComEd. (BOMA Ex. 1.0, pg. 11, ll. 250 to 256).

The Attorney General, on behalf of the People of the State of Illinois, agreed with BOMA witness Dr. Laffer that it is self-defeating for consumers to limit the price decreases a supplier might be willing to offer (as ComEd has proposed) given the asymmetrical cost structure that exists in the electric generation industry. (AG In. Br., pg. 57; BOMA Ex. 1.0, pp. 12-13, ll. 282-287; BOMA Ex. 3.0, pg. 4, ll. 80-84, pg. 9, ll. 199-203; ComEd Tr. pg. 412, ln. 18 to pg. 413, ln. 7). Midwest Generation and Commission Staff oppose Dr. Laffer's pay as bid proposal but have merely mirrored ComEd's positions on this matter in their briefs. (MWGen In. Br., pp. 18-20; ICC Staff In. Br., 59-64). The Commission will determine below whether Dr. Laffer's pay as bid proposal's four modifications to ComEd's proposed uniform, "market clearing" price auction design should be adopted.

1. Continuation of Price "Tick Down" Below The "Market Clearing" Price and Bidders' Ability to Bid Whatever Price They Desire Regardless of Their Prior Bidding Behavior

BOMA Position

BOMA witness Dr. Laffer testified that the ComEd auction should not stop at the uniform "market clearing" price at which the quantity of electricity that suppliers are willing to supply meets ComEd's full electricity requirements as ComEd has proposed. (BOMA Ex. 1.0, pg. 11, ll. 249-252). ComEd's proposed auction design prohibits bidders from bidding lower than this "market clearing" price. (ComEd Ex. 19.3, pg. 8). Dr. Laffer contends that ComEd's approach violates basic economics because it does not utilize the entire supply curve. (BOMA Ex. 1.0, pp. 12-13, ll. 279-287; BOMA Ex. 3.0, pg. 12, ll. 279-283).

Commission Staff pointed out in its Final Report to the Commission on the Post-2006 Initiative that under a uniform price approach "the auction price may reflect the higher costs of the less efficient generators bidding in the market." (ComEd Ex. 1.2, Post 2006 Staff Report, pg. 11). BOMA witness Dr. Laffer contends that his recommended pay as bid approach avoids this problem since bidders who can produce low cost electricity will need to bid a price lower than the uniform, "market clearing" price to insure their success because they will not know when the "market clearing" price is reached. In this way, Dr. Laffer's pay as bid approach utilizes the entire supply curve. (BOMA Ex. 1.0, pp. 12-13, ll. 279-287; BOMA Ex. 3.0, pg. 12, ll. 279-283).

Dr. Laffer testified that the prohibition on suppliers bidding lower in ComEd's proposed descending clock, uniform price auction makes sense only in the context of ComEd's affiliate relationship with electricity supplier Exelon Generation, which owns more than 10,000 megawatts of nuclear generating capacity located in ComEd's service territory. (ComEd Tr., pg. 398, ll. 6-12; CUB-CCSAO Ex. 1.2). ComEd's affiliate Exelon Generation will be paid the same uniform, "market clearing" price as bidders with much higher production costs under ComEd's proposed auction structure. (ComEd Ex. 1.2, Post 2006 Staff Report, pg. 11; BOMA Ex. 1.0, pp. 15-16, ll. 346-368).

Dr. Laffer first pointed out ComEd's serious conflict of interest due to its affiliation with Exelon Generation in his direct testimony. (BOMA Ex. 1.0, pp. 15-16, ll. 340-368). Although ComEd's prohibition on bidders bidding lower helps Exelon Generation and its parent company Exelon Corp., Dr. Laffer testified that it is diametrically opposed to the interests of ComEd's consumers. (ComEd. Tr., pg. 412, ln. 18 to pg. 413, ln. 7).

Dr. Laffer contends that his pay as bid proposal will provide bidders not only the opportunity but also the incentive to bid lower to be successful in the auction. (ComEd Tr., pg. 414, ln. 14 to pg. 415, ln. 21). Dr. Laffer has proposed that bidders not be prohibited from bidding to supply a tranche (i.e., a slice) of ComEd's full requirements for electricity supply at any price before the auction closes even if they previously have stopped bidding to provide that particular tranche at a higher auction price. (BOMA Ex. 3.0, pg. 3, ll. 58-63).

ComEd Position

ComEd did not refute the issue of its conflict with Exelon Generation. ComEd instead contended that its uniform price approach is preferable to Dr. Laffer's pay as bid method because bidders have the incentive to bid low in a uniform, "market clearing" price auction since all bidders know they will receive the market clearing price if they are successful in the auction, regardless of how low they bid. (ComEd Rev. Ex. 11.0, pg. 68, ll. 1597-1600). Additionally, ComEd contends that bidders could "game play" under Dr. Laffer's approach because they would be allowed to reenter the bidding to supply a tranche of supply even if they had not bid to supply that tranche of supply at a higher price. (ComEd Rev. Ex. 19.0, pp. 36-37, ll. 779-781; ComEd In. Br., pg. 94). ComEd contends that bidders could not "game play" under their uniform price approach because bidders could not bid at a lower price to provide a tranche of supply if they had not bid on the tranche at a higher price. (ComEd Rev. Ex. 19.0, pg. 34, ll. 727-730).

Commission Analysis And Conclusion

The Commission is of the opinion and concludes that ComEd's proposed auction process should be modified so that bidders are not prohibited from bidding as low as they desire, and are not notified when the market clearing price is reached. ComEd's contention that bidders could bid more aggressively in a uniform price auction could apply to market clearing price auctions that do not use a descending clock structure which starts with a high price and clicks down. However, as Dr. Laffer testified, ComEd's contention does not apply here because bidders will never have a chance to bid low under the descending clock structure. (ComEd. Rev. Ex. 11.0, pp. 67-68, ll. 1579-1605; BOMA Ex. 3.0, pg. 8, ll. 168-172; ComEd Tr., pg. 389, ll. 9-16; pg. 294, ll. 16-18). In a descending clock structure, Dr. Laffer clearly is correct that bidders should be allowed to bid as low as they desire in an effort to be successful in the auction and should not be notified when the market clearing price is reached.

The Commission is of the opinion and concludes that Dr. Laffer's proposed pay as bid approach provides bidders with both the opportunity and the incentive to bid lower than under ComEd's proposed uniform price approach because that is the only way a bidder can assure his success under Dr. Laffer's approach. By allowing the price to continue to tick down below ComEd's "market clearing" price, Dr. Laffer's pay as bid approach will result in a more competitive auction and therefore the lowest possible market-determined charges to consumers.

The Commission also is of the opinion and concludes that a bidder should not be prohibited from bidding to supply a particular tranche of electricity supply even if the bidder has not bid to supply this particular tranche of supply in higher priced rounds. Under Dr. Laffer's pay as bid approach bidders do not know the amount of excess supply being bid into the auction. A bidder can't "game play" the pay as bid auction by not bidding to provide a tranche of electricity supply merely for the purpose of attempting to achieve an artificially high auction price because the bidder's decision not to bid cannot stop the pay as bid auction unless all other bidders have stopped bidding at that price. In contrast, under ComEd's uniform "market clearing" price approach, a bidder's refusal to bid at a particular price could possibly stop the auction even if another bidder was willing to bid lower if the bidder's failure to bid results in the "market clearing" price being reached. The Commission is of the opinion and concludes that "game playing" is more likely under ComEd's uniform price approach than under Dr. Laffer's pay as bid approach.

2. Providing Information to Bidders On The Amount of Excess Supply Being Bid Into the Auction and Determining The Decrements By Which Auction Prices Should be Lowered During the Auction

BOMA Position

BOMA witness Dr. Laffer contends that ComEd's proposed approach of providing information on excess supply being bid into the auction will allow bidders to implicitly collude on when to stop bidding and thereby implicitly collude on a high auction price. (BOMA Ex. 1.0, pg. 14, ll. 307-316). Dr. Laffer explained his position fully in response to questions by Administrative Law Judge Wallace:

Q Dr. Laffer --

A Yes, sir.

Q – very briefly, why do you not want information to be shared?

A Because the information --I'm sorry. Excuse me.

Q How are bidders are going to react if they don't have any information?

A Well, they do have a lot of information, sir. It's just that they don't have the information as to what their competitors are doing at this moment.

They know their cost functions. They know the marketplaces. They know the substitution with the PJM markets. They know what the price is. They know all of that. They know the rules.

They just don't know what everyone else is bidding. And that information (*sic*), allowing them to know what everyone else is bidding and at what prices or what volume allows them to game-play the system and effectively have an implicit collusion to keep the price high.

It's like anything -- I guess it was the Duquesne Club dinners, which was the famous antitrust in Pittsburgh where all the suppliers got together and talked price.

That shouldn't be allowed in these markets, sir, because it really allows these people to keep the price higher than it otherwise would be. It's just natural that they would do that.

And I'm not -- I mean, I understand being a supplier and how you always want the highest price, but that's not what's best for the people of Illinois.

(ComEd Tr., pg. 409, ln. 4 to pg. 410, ln. 15).

Dr. Laffer further testified that ComEd's approach of basing the amount of the decrements by which auction bid prices are reduced on the amount of excess supply remaining in the auction also will signal bidders on when to implicitly collude on a high price. (BOMA Ex. 1.0, pg. 14, ll. 310-316; ll. 323-328). Therefore, Dr. Laffer proposed that bids be decreased in equal decrements rather than pursuant to a formula based on the amount of remaining excess supply as ComEd has proposed. (BOMA Ex. 3.0, pg. 4, ll. 86-88). Dr. Laffer also stated that bidders in ComEd's auction do not need to be protected from the so-called "winner's curse" because they are sophisticated bidders who will know the value of tranches of ComEd's full requirements of electricity supply on which they are bidding. (BOMA Ex. 3.0, pp. 13-14, ll. 288-322).

ComEd Position

ComEd contends that Dr. Laffer's approach would not get the "best bids" because information regarding the amount of excess supply being bid into the auction would not be revealed to the bidders. (Joint Tr., pg. 981, ln. 18 to pg. 982, ln. 6). ComEd's witnesses have testified throughout this proceeding that the purpose of providing bidders with round-by-round information on excess supply is to enable bidders to learn what other bidders are doing in each round of the auction and adjust their bidding behavior accordingly before the next round begins. (ComEd Ex. 3.0, pg. 14, ll. 312-314; pg. 32, ll. 689-699; ComEd Ex. 4.0, pg. 29, ll. 677-681; pg. 44, ll. 1027-1031; pg. 59, ll. 1394-1396, pp. 62-63, ll. 1490-1503; ComEd Ex. 8.0, pg. 44, ll. 928-932). According to ComEd's auction designer Dr. LaCasse, information on excess supply will be relevant to a bidder's assessment of other bidders' behavior and the bidder's decision on when to stop bidding. (Joint Tr., pg. 982, ln. 12 through pg. 983, ln. 17). This also is the reason ComEd has stated for its proposal that prices in the auction should tick down in amounts based on the excess supply remaining in the auction rather than in equal decrements. (ComEd Rev. Ex. 11.0, pp. 83-86, ll. 1969-2027).

Commission Analysis And Conclusion

The issue for the Commission to decide is whether the "adjustment" in behavior which ComEd and BOMA agree is caused by revealing the amount of excess supply is a good thing or bad thing for consumers. That is, does the "adjustment" of bidders behavior when they are informed of the excess supply remaining in the auction result in a lower price or higher price than if this information was not revealed to bidders?

The Commission is of the opinion and concludes that informing bidders of the excess supply remaining in the auction would result in a higher auction price than if this information is withheld and therefore is detrimental to the interests of ComEd's consumers. Moreover, the Commission believes that it is unnecessary to protect the sophisticated bidders expected in ComEd's auction from the so-called "winner's curse" by providing them information on the amount of excess supply being bid during the course of the auction. For these reasons, the Commission agrees with Dr. Laffer's position that bidders should not be informed of the amount of excess supply remaining during the auction.

The Commission also is of the opinion and concludes that the auction price should be lowered in equal decrements as Dr. Laffer has proposed, rather than basing decrements on the amount of excess supply as ComEd has proposed, in order to avoid giving bidders information which will signal them on when to stop bidding. If bidders are not provided with signaling information regarding remaining excess supply and the auction is not stopped at a uniform, "market clearing" price as Dr. Laffer has recommended, the Commission is of the opinion that bidders will make bids closer to their marginal costs of production and thereby lower the supply charges paid by consumers to ComEd. (BOMA Ex. 1.0, pp. 10-11, ll. 1234-1242; pp. 12-13, ll. 272-287; pg. 15, ll. 329-334).

Other Issues Related To Dr. Laffer's Descending Clock, Pay As Bid Proposal

3. Sufficiency Of Electricity Supply

BOMA Position

BOMA's position is that achieving sufficient supply for ComEd auction products is not a problem under Dr. Laffer's proposed pay as bid approach. The auction process will be the only opportunity to obtain long-term supply contracts with ComEd. (BOMA Ex. 3.0, pg. 11, ll. 244-252). In ComEd's service territory, the amount of generating capacity greatly exceeds the peak electricity demand (i.e., there is substantial excess generating capacity). (Joint Tr., pg. 704, ll. 6-18; CUB-CCSAO Ex. 1.2). Moreover, ComEd consistently pointed out throughout this case that electricity supply from generating capacity anywhere in the very large PJM regional transmission organization can be bid into the auction. (ComEd Ex. 5.0, pg. 1, ll. 19-21; ComEd Ex. 9.0, pg. 18, ll. 405-410; ComEd Ex. 14.0, pg. 9, ll. 185-188; ComEd Ex. 15.0, pg. 10, ll. 186-193).

ComEd Position

ComEd witness Dr. LaCasse testified that there might not be enough suppliers for a given product (i.e., on-year, three-year, or five-year products) under Dr. Laffer's pay as bid approach. (Joint Tr., pg. 968, ll. 5-6). However, Dr. LaCasse also stated the following under cross-examination by BOMA counsel:

> Q. Right, but there is likely to be interest in the five-year product, isn't there?
>
> A. Yes.
>
> Q. And there is likely to be interest in, a lot of interest, in the five-year product, correct?
>
> A. Yes.
>
> Q. And there is likely to be a lot of interest in the three-year product, correct?
>
> A. Yes.
>
> Q. And there is likely to be a lot of interest in the one-year product, correct?
>
> A. Yes.

(Joint Tr., pg. 981, ll. 6-17).

Commission Analysis And Conclusion

Despite ComEd's statements that Dr. Laffer's pay as bid approach could pose a risk of undersubscription of auction products, the record evidence points to the opposite conclusion. The Commission is of the opinion and concludes that Dr. Laffer's proposed descending clock pay as bid auction approach will in all likelihood provide sufficient electricity supply for each of ComEd's auction products.

4. Feasibility of Implementation and Ability to Achieve Low Prices of Pay as Bid Versus Uniform Price Auctions

BOMA Position

BOMA contends there are several examples of pay as bid auctions for electricity and other products that have been successfully conducted. BOMA points out that ComEd auction designer Dr. LaCasse testified that ComEd's proposed auction in this case and the descending clock auction now being used in New Jersey were patterned after the FCC's spectrum auction, which is a pay as bid auction. (ComEd Ex. 4.0, pp. 3-4, ll. 72-86; pg. 11, ll. 235-246). Interestingly, however, ComEd and the New Jersey utilities abandoned the pay as bid format used by the FCC. BOMA points out that the decisions of these utilities contrast dramatically with the recommendation of one of ComEd's witnesses in this proceeding, Andrew Parece, that a pay as bid approach be used by the electric utilities in Massachusetts because pay as bid pricing best accomplishes the goal of determining competitive supply prices. (ComEd Ex. 12.2, pg. 12; *see also* ComEd Tr., pg. 1197, ll. 13-18).

BOMA witness Dr. Laffer testified that wholesale electricity purchasers with the most experience using auctions to purchase electricity (i.e., utilities in the United Kingdom) used a uniform, "market clearing" price auction beginning in 1990 and then switched to a pay as bid auction in 2001. (BOMA Ex. 1.0, pg. 8, ll. 164-171; pg. 9, ll. 191-194). Dr. Laffer testified that the regulatory agency overseeing the England and Wales electricity market replaced the uniform price approach with the pay as bid method after they found that the uniform price approach facilitated the exercise of market power to maintain or increase electricity prices at the expense of consumers. (BOMA Ex. 1.0, pp. 8-9, ll. 172-188). During the first year of the pay as bid approach in England and Wales, annual prices for baseload electricity decreased by 20% and peaking power prices fell by 27%. (BOMA Ex. 1.0, pg. 9, ll. 191-205). The pay as bid auction format was subsequently implemented in electricity markets across the entire United Kingdom. (BOMA Ex. 3.0, pg. 23, ll. 529-532).

BOMA contends that, in contrast to the pay as bid auction in the United Kingdom, uniform price auctions in the United States have not resulted in low prices. Ohio and New Jersey are the two states which have conducted descending clock, uniform price auctions to date. In Ohio, the uniform price auction results were rejected because prices were too high. (ComEd Tr. Pg. 516, ll. 2-21). In New Jersey, achievement of the lowest prices for consumers was not even one of the goals of the New Jersey auction, as ComEd (and New Jersey) auction designer Dr. LaCasse stated on the record in this proceeding. (Joint Tr., pg. 81, ll. 7-18).

ComEd Position

ComEd contends that Dr. Laffer's descending clock, pay as bid auction should not be adopted because it has not been used in the United States and ComEd's proposed uniform price approach has been successfully utilized in New Jersey. (ComEd In. Br., pg. 95). ComEd points out that Dr. Laffer has not previously designed an auction. (ComEd In. Br., pg. 95). In short, ComEd contends that Dr. Laffer's proposal should not be adopted because it is unproven. (ComEd In. Br., pg. 95).

Commission Analysis And Conclusion

The Commission is of the opinion and concludes that the experience with pay as bid auctions has been extensive. The Commission further is of the opinion and concludes that Dr. Laffer's proposed pay as bid approach is feasible to implement based on the record in this proceeding.

ComEd relies heavily on the fact that its Illinois auction proposal is modeled on the supply procurement auction used by utilities in New Jersey. In Illinois, apparently unlike New Jersey, achieving the lowest possible prices for consumers not only is a goal, it is the law. The Public Utilities Act ("PUA") requires that public utilities provide service to their customers at the least cost. (220 ILCS 5/8-401). However, ComEd's auction design prohibits bidders from bidding below the "market clearing" price at which ComEd stops its auction. This approach violates the PUA's least cost requirement. Moreover, ComEd's proposed pass-through of these charges to consumers would violate the PUA's requirement that utility rates be just and reasonable. (220 ILCS 5/9-201). Unlike ComEd's proposal, Dr. Laffer's pay as bid approach insures that no price would be paid to any supplier in excess of the lowest price at which the supplier was willing to sell electricity to ComEd. (BOMA Ex. 1.0, pg. 11, ll. 256-257). Therefore, the Commission adopts Dr. Laffer's proposed descending clock, pay as bid approach, including its four modifications to ComEd's proposed auction discussed above, as ComEd's method of acquiring its full requirements for electricity supply beginning January 1, 2007.

I. FIXED PRICE AUCTION PRODUCT AND TARIFFED SERVICE FOR LARGER CUSTOMERS

1. Nature of Auction Product and Tariffed Services for 1-3 MW Customers

ComEd Proposal

ComEd has proposed that customers in the 1-3 MW customer class not be offered the CPP-B auction product but rather be offered a separate CPP-A auction product. (ComEd Ex. 18.0, pg. 25, ll. 556-557). ComEd will procure supply for the CPP-B auction product through a blend of 1-year, 3-year, and 5-year products. (ComEd Ex. 3.0, pg. 23, ll. 517-519). On the other hand, ComEd will procure its full requirements electric supply for the CPP-A auction only through one-year contracts. (ComEd Ex. 3.0, pg. 26, ll. 551-553).

ComEd bases its proposal to limit the 1-3 MW customer class to the CPP-A auction product on its belief that these customers will have more sophisticated energy planning options and be better suited to accept and manage risk than smaller customers in the post-2006 environment. (ComEd Ex. 3.0, pg. 23, ll. 509-511). ComEd witness Mr. McNeil also argued that giving these customers more "price protection" than is afforded to them by the CPP-A auction product may discourage them from seeking out competitive retail electricity suppliers and could therefore inhibit the development of the competitive retail market. (ComEd Ex. 10.0, pg. 52, ll. 112-126).

BOMA Position

BOMA's position is that ComEd should make the CPP-B auction product available to all customers with peak demand of between 1 and 3 megawatts. (BOMA Corr. Ex. 2.0, pg. 6, ll. 130-135). BOMA points out that the 1-3 MW customer class, like smaller customer classes, has not been declared competitive and that the CPP-B auction product should be made available to the 1-3 MW customer class to provide these customers the same price volatility mitigation that ComEd proposes for its other customer classes. (BOMA In. Br., pg 17).

BOMA contends that although 1-3 MW customers may be more sophisticated than other customers this does not mean that they should not be offered ComEd rates that mitigate price volatility. (BOMA In. Br., pg. 18). BOMA also disagrees with ComEd's characterization of the CPP-B auction product as "price protection" and points out that the CPP-B price will be much more volatile than ComEd's currently frozen bundled rates. (BOMA Corr. Ex. 4.0, pg. 17, ln. 376-80). BOMA witnesses Messrs. Brookover and Childress contend that 1-3 MW customers will seek out multi-year contracts with competitive suppliers to avoid annual changes in electricity prices even if the CPP-B auction product is made available to customers because the CPP-B auction price will change annually. (BOMA Corr. Ex. 4.0, pg. 17, ln. 380-383). Therefore, they conclude that offering the CPP-B auction product to the 1-3 MW customer group will not affect the development of the competitive retail market. (BOMA Corr. Ex. 4.0, pg. 18, ln. 386-389).

Staff Position

Staff takes the position that they do not oppose ComEd's offering of the CPP-A product rather than the CPP-B auction product to the 1-3 MW customer class. (Staff In. Br., pg. 101).

CES Position

The Coalition of Retail Electric Suppliers ("CES") contends that the 1-3 MW customer class should be offered the CPP-A auction product. (CES Ex. 1.0, pg. 13, ll. 283-284).

DES-USES Position

Direct Energy Services, LLC and U.S. Energy Savings Corp. ("DES-USES") argue that only an hourly product be made available to customers with demand over 1 MW. (DES/USESC Ex. 1.0, pg. 9., ll. 177-178). DES-USES notes that interval meters have already been installed for customers over 1 MW and therefore no new metering technology would be required to implement this plan. (DES/USESC Ex. 1.0, pg. 30-31., ll. 638-641).

Commission Analysis and Conclusion

The 1-3 MW customer class, like smaller customer classes, has not been declared competitive. These customers should be offered a rate with the same price volatility mitigation that ComEd proposes for its other customer classes. The Commission believes that this approach will not affect the development of the competitive retail market. The Commission is of the opinion and concludes that ComEd's CPP-B auction product must be made available to the 1-3 MW customer class.

2. Nature of Auction Product and Tariffed Service for 400 kW – 1 MW Customers

ComEd Proposal

ComEd initially proposed that the CPP-B auction product be offered to the 400 kW – 1 MW customer class. (ComEd 7.0, pg. 9, ll. 195-202; pp. 42-43, ll. 958-972). In its surrebuttal testimony, however, ComEd revised its position and now proposes to provide the CPP-A auction product rather than the CPP-B auction product to the 400 kW – 1 MW customer class. (ComEd Ex. 18.0, pg. 25, ll. 558-561). ComEd's revised position is contingent on the Commission's acceptance of ComEd's "package" of changes which includes 1) removal of the 400 kW – 1 MW customer class from the CPP-B auction product segment; 2) movement of the 400 kW – 1 MW customer class to the CPP-A auction product segment; and 3) elimination of the customer supply group migration risk factor from the translation of the CPP-B auction price into retail rates. (ComEd Ex. 21.0, pg. 12, ll. 254-264).

BOMA Position

BOMA proposes that the CPP-B auction product be made available to customers in the 400 kW - 1 MW customer class. (BOMA In. Br., pg. 19). BOMA contends that ComEd's new proposal to limit the 400 kW - 1 MW customer class to the CPP-A auction product would be detrimental to this class of customers for the same reasons it is detrimental to the 1-3 MW customer class discussed on page 15 of this Draft Order. (S*ee* BOMA In. Brief, pg. 19).

Staff Position

Staff does not oppose ComEd's current proposal to set the range for the CPP-A auction product customer class between 400 kilowatts and 3 megawatts of peak demand. (Staff In. Br., pg. 101). Staff states that the switching data presented by CES witness Dr. O'Connor supports the inclusion of the 400 kW – 1 MW customer class in the segment being offered the CPP-A auction product. Staff contends that this is a logical and reasonable grouping of customers. (Staff In. Br., pg. 101).

CES Position

CES's original position was that customers in the 400 kW - 1 MW customer class should be offered an annual product that is similar to the CPP-A auction product, except that customers in the 400 kW to 1 MW customer class should be subject to the same switching rules as the CPP-B customers rather than the switching rules for CPP-A customers proposed by ComEd. (CES Ex. 4.0, pp. 10-11, ll. 241-248). CES's current position is that the customer groupings in ComEd's current proposal appropriately align the 400 kW to 1 MW customers with the 1-3 MW customers. (CES In. Br., pg. 26).

Commission Analysis and Conclusion

The 400 kW – 1 MW customer class, like smaller customer classes, has not been declared competitive. These customers should be offered a rate with the same price volatility mitigation that ComEd proposes for its other customer classes. The Commission believes that this approach will not affect the development of the competitive retail market. The Commission is of the opinion and concludes that ComEd's CPP-B auction product must be made available to customers in the 400 kW – 1 MW customer class.

VII. TARIFF AND RATE DESIGN ISSUES

B. MATTERS CONCERNING RIDER CPP

6. Rider CPP – Translation to retail charges

a. Customer Supply Group Migration Risk Factor

ComEd Proposal

ComEd originally proposed that a customer supply group migration risk factor be included in the translation of CPP-B auction price into retail rates. (ComEd Ex. 13.0, pp. 13-14, ll. 287-288). ComEd stated that a customer group migration risk factor was needed because larger customers have historically shown a greater propensity to switch on and off ComEd supply. (ComEd Ex. 7.0, pp. 56-58, ll. 1263-1309). ComEd contended that rates for these customers should include a migration risk factor which reflects the possible premium that suppliers might add to their prices in light of the historically higher switching rates of these customers. (ComEd Ex. 7.0, pp. 56-58, ll. 1263-1309).

ComEd revised its position on the migration risk factor in its surrebuttal testimony. (ComEd Ex. 21.0, p. 12, ll. 254-264). ComEd's current position is that no customer supply group migration risk factor is needed in the translation of the CPP-B auction prices into retail rates if, and only if, ComEd's package of three auction/rate design changes are accepted by the Commission. (ComEd In. Br., pg. 143). ComEd's "package" of changes includes: 1) removal of the 400 kW – 1 MW customer class from CPP-B auction product segment; 2) movement of the 400 kW – 1 MW customer class to the CPP-A auction product segment; and 3) elimination of the customer supply group migration risk factor from the translation of the CPP-B auction price into retail rates. (ComEd Ex. 21.0, pg. 12, ll. 254-264).

BOMA Position

BOMA's position is that no customer supply group migration risk factor should be used in the translation of the CPP-B auction prices into retail rates regardless of the customer classes which are offered the CPP-B auction product. (BOMA Corr. Ex. 2.0, pg. 6, ll. 115-116). BOMA witnesses Messrs. Brookover and Childress challenged the validity of ComEd's premise that a customer supply group migration risk factor could be calculated for post-2006 rates for different customer classes based on switching statistics during the transition period. (BOMA Corr. Ex. 2.0, pg. 15, ll. 307-314). BOMA's witnesses testified that larger customers will want to lock in electricity costs through long-term contracts with competitive electric suppliers post-

2006 since ComEd's post-2006 bundled rates will change at least annually. (BOMA Corr. Ex. 2.0, pg. 17, ll. 358-361). BOMA's witnesses pointed out that these long-term contracts could significantly change customers' switching behavior post-2006. (BOMA Corr. Ex. 2.0, pp. 17-18, ll. 365-367). BOMA reasons that the unpredictability of switching between ComEd and competitive suppliers post-2006 means that ComEd's calculation of customer supply group migration risk factors based on transition period statistics will unfairly shift costs to larger non-residential customers. (BOMA Corr. Ex. 4.0, pg. 12, ll. 257-259).

Staff Position

Commission Staff takes the position that the Commission should not approve a customer supply group migration risk factor in any form in this proceeding. (Staff In. Brief, p. 163). Staff contends that the customer supply group migration risk factor is deficient in both theory and practice. (Staff In. Br., pg. 160). Staff witness Mr. Lazare stated that he found a customer supply group migration risk factor to be problematic because it was poor policy, counterproductive from an overall cost standpoint, and not used by any other utility. (ICC Staff Ex. 6.0, pg. 25, ll. 570-572) Mr. Lazare also testified that the specific adder proposed by ComEd was ill-conceived. (ICC Staff Ex. 6.0, pg. 25, ll. 572-573).

CES Position

CES's position is that ComEd's proposed customer supply group migration risk factor was flawed because it (1) underestimates the amount of PPO load that is likely to switch to competitive supply if savings were available; and (2) incorrectly estimates how much the forward electricity supply price for a given period could change. (CES Ex. 3.0, pg. 5, ll. 108-111.) CES contended that ComEd's assumption that only 50% of PPO load would consider taking service from an alternative retail electric supplier is overly conservative and that ComEd should estimate the PPO migration potential at 100%. (CES Ex. 3.0, pg. 9-10, ll.196-200). Additionally, CES contended that a reasonable observation time period for ComEd to estimate forward price volatility would be over the six-month period prior to the applicable auction. (CES Ex. 3.0, pg. 14, ll. 296-297).

Commission Analysis and Conclusion

ComEd's proposed customer supply group migration risk factor is ill-conceived and will unfairly shift costs to larger non-residential customers. The Commission is of the opinion and concludes that ComEd should not include a customer supply group migration risk factor in the translation of the CPP-B auction price into retail rates.

D. ADDITIONAL TARIFF AND RATE DESIGN ISSUES

1. Staff's Rate Increase Mitigation Proposal

Staff Proposal

Commission Staff witness Mr. Lazare has proposed a rate mitigation plan which would adjust increases in ComEd's power costs to limit overall bill increases for customers to the greater of the following: 20% or 150% of the average for customer in the CPP-B auction. (ICC Staff Exhibit 6.0, pg. 21, ll. 473-475). Mr. Lazare's proposal solely addresses bill impacts within the context of the CPP-B auction and does not extend to the CPP-A auction. (ICC Staff In. Br., pg. 200). Staff states that there are clear and compelling reasons for considering bill impacts in the ratemaking process and that these impacts are a key issue in the current regulatory environment. (ICC Staff In. Br., pp. 196-197). Staff notes that there are two reasons why bill impacts play a central role in this case: (i) the lack of information about post-2006 rate levels; and (ii) the fact that ComEd's proposal to realign customer rate classes can by itself raise bills for some customers and lower bills for others. (ICC Staff In. Br., pg. 198). Mr. Lazare's mitigation plan specifically applies to residential space heating customers. (ICC Staff Ex. 14.0, pp. 15-16, ll. 353-358).

BOMA Position

BOMA takes the position that, if Mr. Lazare's rate mitigation plan is adopted, the Commission should order ComEd to include a separate subgroup for all nonresidential space heating customers under 3 megawatts in their implementation of the plan unless the Commission accepts BOMA's proposal that ComEd exempt nonresidential space heating customers from demand charges in ComEd's delivery service tariffs discussed on page 26 of this Draft Order. (See BOMA In. Br., pg. 20).

BOMA witnesses Messrs. Brookover and Childress contend that nonresidential space heating customers will face rate shock from a rate increase of between 27.2% (at an auction price of 5 cents per kWh) and 46.5% (at an auction price of 6 cents per kWh) in 2007 if no rate mitigation plan is applied to these customers. (BOMA Ex. 2.1). Messrs. Brookover and Childress show that the rate increase for nonresidential space heating customers would be 10.7% greater than the increase for nonresidential, non-space heating customers in the absence of rate mitigation. (BOMA Corr. Ex. 4.0, pg. 3, ll. 51-56). Additionally, BOMA notes that Staff witness Mr. Lazare testified on cross-examination that it is possible to set up a separate group for nonresidential space heating customers in Staff's rate mitigation plan just as ComEd did when it set up a separate customer transition charge for these customers. (Joint Tr., pg. 1239, ll. 8-19).

ComEd Position

ComEd takes the position that the Commission should approve Staff's rate mitigation proposal for customers taking service under the CPP-B auction product. (ComEd In. Br., pg. 167). ComEd states that its understanding of Staff's mitigation plan is that the plan includes applying mitigation criteria to residential space heating customers as a subgroup of the Residential Customer Supply Group. (ComEd In. Br., pg. 169).

CCG Position

The position of Constellation Energy Commodities Group, Inc. ("CCG") is that there is no need to have a mitigation plan to artificially soften the impact of any potential rate shock which may result from the auction. (CCG Ex. 2.0, pg. 5, ll. 148-150). CCG notes that the auction is designed to ensure that proper price signals are developed through competitive bidding. (CCG Ex. 2.0, pg. 6, ll. 165-167) However, CCG contends that if the Commission does approve a mitigation plan the Commission must do the following: (i) not impact generation prices; and (ii) insure that all winning bidders are paid the auction clearing price applicable to the tranche they are selected to provide. (CCG Ex. 2.0, pp. 6-7, ll. 180-192).

Dynegy Position

Dynegy indicates that rate impacts are a valid concern and that the decision whether or not to mitigate rate increases is essentially a policy decision. (DYN Ex. 1.2, pg. 12, ll. 259-260). Dynegy notes that Staff's rate mitigation proposal might have the effect of raising prices rather than lowering them. (DYN Ex. 1.2, pg. 12-13, ll. 269-270). Dynegy explains that the mitigation could effect the switching propensity of different customer groups and that the additional switching risk will need to be factored in by suppliers and will likely raise the final auction-clearing price. (DYN Ex. 1.2, pg. 12, ll.262-269).

Commission Analysis and Conclusion

The Commission recognizes that "rate shock" resulting from the auction is an important ratemaking consideration. The Commission notes that residential and non-residential space heating customers are particularly vulnerable to excessive rate increases post-2006.

[**If the Commission accepts BOMA's non-residential space heating proposal discussed below on page 26 then the Commission should conclude:]** The Commission is of the opinion and concludes that Staff's rate mitigation proposal should be adopted.

Or

[If the Commission does not accept BOMA's non-residential space heating proposal discussed below on page 26 then the Commission should conclude:] The Commission is of the opinion and concludes that Staff's rate mitigation proposal should be adopted and that it should include a separate subgroup for all non-residential space heating customers under 3 megawatts.

2. Elimination of Rider ISS

BOMA Proposal

BOMA proposes that the Commission request that ComEd continue to offer ComEd's Rider Interim Supply Service – ISS tariff ("Rider ISS") post-2006. (BOMA In. Br., pg. 21). BOMA states that Rider ISS has been an indispensable part of ComEd's 'toolbox' to encourage customers to make proper electricity supply purchasing decisions and that it has been instrumental in the development of a competitive electricity market during the competitive transition period. (BOMA Corr. Ex. 4.0, pg. 21, ll. 461- 462; BOMA In. Br., pg 21). BOMA notes that none of the tariffs proposed by ComEd for use post-2006 provide Rider ISS' important three months of time to purchase from ComEd at a stable price and then choose another competitive supplier. (BOMA Corr. Ex. 4.0, pg. 21, ll. 463- 466). In particular, BOMA contends that many customers are uneasy with the hourly product of the CPP-H auction which can be volatile by nature. (BOMA Corr. Ex. 4.0, pg. 21, ll. 466- 467). BOMA concludes that the CPP-H auction does not provide an attractive "safe haven" for these customers and that customers may be forced into an unwise procurement choice by rushing their decision with only CPP-H as a temporary fallback. (BOMA Corr. Ex. 4.0, pg. 21, ll. 467- 470).

ComEd Position

ComEd's position is that the Commission should reject BOMA's request that the Commission order ComEd to continue Rider ISS after the end of the transition period. (ComEd Ex. 13.0, pg 56, ln. 1225). ComEd believes that BOMA's proposal is without merit because Rider ISS will no longer be necessary or appropriate post-2006 because the post-2006 bundled rates will provide the necessary service that Rider ISS currently provides. (ComEd Ex. 13.0, pp. 55-56, ll. 1219- 1225). Additionally, ComEd contends that the Commission lacks the jurisdiction and authority to require ComEd to continue to offer Rider ISS after the end of the transition period. (ComEd In. Br., pg. 170).

CES Position

CES takes the position that the primary problem with continuing to offer Rider ISS post-2006 is that it would require a separate pricing mechanism separate from the prices established by the auction. (CES Ex. 4.0 Rev., pg. 35, ll. 786-788). CES contends it would require something similar to continuing the current PPO pricing mechanism. (CES Ex. 4.0 Rev., pg. 35-36, ll. 786-790). Additionally, CES notes that the hourly service proposed by ComEd should be adequate post-2006 given the number of alternatives that will be available in the market at that time, including ComEd's bundled rates. (CES Ex. 4.0 Rev., pg. 36, ll. 792-793). CES states that, if ComEd is required to offer a monthly default service, then it should be with supply that ComEd acquires in a supplemental auction just prior to the month in which it would be used. (CES Ex. 4.0 Rev., pg. 36, ll. 793-796).

Commission Analysis and Conclusion

Rider ISS is an important "tool" which enables customers to make wise supply decisions. Rider ISS has been instrumental in the development of the competitive retail market during the transition period. Rider ISS will continue to be necessary post-2006 because none of ComEd's post-2006 proposed tariffs will adequately replace Rider ISS's unique function.

The Commission is of the opinion and concludes that ComEd should continue to offer Rider ISS after the end of the transition period and hereby requests that ComEd do so.

3. Non-Residential Space Heating Customers

BOMA Proposal

BOMA proposes that ComEd exempt nonresidential electric space heating customers from demand charges in its delivery services tariffs on electricity used for space heating in order to make the rate increase for nonresidential space heating customers comparable to the increase for nonresidential non-space heating customers. (BOMA Corr. Ex. 4.0, pg. 7, 141-143). BOMA witnesses Messrs. Brookover and Childress estimate a 27.2% to 46.5% increase in rates for nonresidential space heating customers post-2006 if the Commission does not take action specifically designed to lessen the rate increases for these customers. (BOMA In. Br., pg. 21)

BOMA states that ComEd's current Rider 25 bundled service rate for nonresidential space heating customers, which ComEd's proposals would eliminate, includes an exemption from demand changes for electricity used for space heating. (BOMA Corr. Ex. 2.0, pp. 12-13, ll. 251-259; BOMA Corr. Ex. 4.0, pg. 4, ll.74-75). BOMA contends that its proposal for nonresidential space heating customers merely continues the treatment of these customers that was begun nearly three decades ago when Rider 25 was first instituted. (BOMA Corr. Ex. 4.0, pg. 4, ll. 76-78).

BOMA notes that its proposal would apply to all non-residential space heating customers regardless of whether they buy their electricity from ComEd or a competitive supplier. (BOMA In. Br., pg. 21). BOMA points out that this method ensures that there will be no adverse impact on either the competitive retail electric market or the auction's results. (BOMA In. Br., pg. 21).

ComEd Position

ComEd's argues that the Commission should reject BOMA's nonresidential space heat proposal because it involves amending and establishing delivery services tariffs which are not before the Commission in this docket. (ComEd In. Br., pg. 170). ComEd witness Mr. Crumrine testified that Rider 25 was created under the previous vertically integrated utility structure and was designed based on facts that are no longer relevant. (ComEd Ex. 13.0, pg. 57, ll. 1252-1253) ComEd also contends that exempting customers from a distribution facilities charge (i.e., demand charges in their delivery services tariffs) would send an inaccurate price signal regarding the cost of distribution capacity. (ComEd Ex. 13.0, pg. 57, ll. 1260-1261)

Dynegy Position

Dynegy takes the position that BOMA's proposal would not have the same unintended consequences that Staff's rate mitigation plan might have on the final auction price because BOMA's proposal focuses more on ComEd's delivery services charges rather than directly on the commodity charge. (DYN. In. Br., pg. 24).

Commission Analysis and Conclusion

BOMA's plan would continue the treatment of nonresidential space heat customers that was begun nearly three decades ago when Rider 25 was first instituted. Moreover, since BOMA's plan would apply to all non-residential space heating customers regardless of whether they buy their electricity from ComEd or a competitive supplier, BOMA's plan will not adversely impact either the competitive retail electric market or the auction results.

The Commission is of the opinion and concludes that ComEd should exempt nonresidential electric space heating customers from demand charges in its delivery services tariffs on electricity used for space heating.

VIII. CONCLUSIONS AND MIXED LEGAL/FACTUAL ISSUES

A. LEGALITY OF RIDER CPP

Please see page 13 of this Draft Order, which discusses the legality of ComEd's proposed descending clock, uniform price auction procurement process that ComEd has proposed in Rider CPP.

B. LEGALITY OF RIDER PPO-MVM

ComEd Position

ComEd states that its proposed Rider PPO – MVM implements the PPO required under Sections 16-110(c) and 16-112(a) of the Public Utilities Act ("PUA"). (220 ILCS 5/16-110(c), 5/16-112(a)). (ComEd Supplemental Statement, pg. 4; ComEd Ex. 17.0, pg. 30, ll. 675-678). In ComEd's proposed Rider PPO-MVM, ComEd uses the electricity supply price determined by the auction process as the tariff's market value. (ComEd Ex. 7.0, pg. 20, ll. 448-451). ComEd's proposed Riders CPP and PPO-MVM provide, and ComEd's witnesses have testified, that the charges for electricity in ComEd's proposed bundled services tariffs and proposed PPO will be one and the same, namely, the price determined in the auction. (Tr. pg. 130, ll. 4-17; pg. 737, ll. 4-15).

ComEd witness Ms. Juracek testified that the Supplier Forward Contracts ComEd proposes to enter into with successful bidders in the auction fall within the market value determination methods permitted by Section 16-112(a) of the PUA for purposes of establishing PPO charges. (ComEd Ex. 9.0, p. 51, ll. 1197-1203; 220 ILCS 5/16-112(a)). ComEd witness Ms. Juracek stated that the Supplier Forward Contracts are futures contracts and are "market traded" because the auction is itself a market in which wholesale energy suppliers vie with each other to sell energy to ComEd. (ComEd Ex. 9.0, p. 52, ll. 1224-1229; ComEd Ex. 17.0, p. 30, ll. 675-678). Ms. Juracek also testified that the Supplier Forward Contracts are directly applicable to the market in which ComEd sells, and the customers in its service area buy, electric power and energy. (ComEd Ex. 9.0, pg. 51, ll. 1207-1209). Ms. Juracek further contended that the final auction price is an exchange traded or market traded index within the meaning of Section 16-112(a) of the PUA. (ComEd Ex. 9.0, pg. 51, ll. 1212-1213; pg. 54, ll. 1282-1283; pg. 53, ll. 1249-1254).

Commission Staff Position

With regard to the "market value" to be determined for PPO purposes under Section 16-112(a) of the PUA, Staff states that there are three requirements. (Staff In. Br., pg. 207). The first requirement is that the market value must be the function of one of three alternatives: (1) an index; or (2) an options or futures contracts; or (3) contracts. (Staff In. Br., pg. 207). The second requirement is that the index, options or futures contracts, or contracts must be a function of exchange trading or market trading. (Staff In. Br., pg. 207). The third and final requirement is that the index, options or futures contract, or contracts must be applicable to the market in which the utility sells, and the customers in its service area buy, electric power and energy. (Staff In. Br., pg. 207). Staff, relying largely on the testimony of ComEd witness Ms. Juraceck, further states that the market value which ComEd uses as the market value in its proposed Rider PPO-MVM meets these three requirements. (Staff In. Br., pg. 208-209).

The Commission notes that Commission Staff witness Mr. Zuraski stated under cross-examination that the price determined by the auction is not an exchange traded or other market traded index or futures contract. (Joint Tr., pg. 1305, ll. 2-7)

CES Position

CES witness Dr. O'Connor stated that the Supplier Forward Contracts are not futures contracts. (Joint Tr., pg. 246, ln. 20 to pg. 247, ln. 2; pg. 1305, ll. 2-7; Tr., pg. 399, ln. 15 to pg. 400, ln. 10).

BOMA Position

BOMA states that ComEd's proposed Rider PPO-MVM does not comply with Section 16-112(a) of the PUA and requests that the Commission order ComEd to continue to offer its current Rider PPO-MI, or alternatively a PPO determined by a neutral fact finder, post-2006 in order to comply with Section 16-112(a).

BOMA states that ComEd's proposed Rider PPO-MVM violates Section 16-112(a) of the Act because the market value used in this tariff is not a function of an exchange or other market traded index, options or futures contract or contracts applicable to the market in which the utility sells, and the customers in its service area buy, electric power and energy. (220 ILCS 5/16-112(a)).

BOMA witness Dr. Laffer testified that a futures contract is an obligation to make delivery or take delivery of a specific quantity of a commodity at a particular price at a specific future date or in a stipulated future month. (BOMA Ex. 1.0, pg. 17, ll. 392-395). Because ComEd's Supplier Forward Contracts require the supplier to deliver a tranche, or vertical slice, of ComEd's full requirements for electricity supply they are necessarily indefinite with respect to quantity. (ComEd Ex. 3.0, pg. 21, ll. 460-472; pg. 37, ll. 804-808). Dr. Laffer contended that the indefinite quantity term of the Supplier Forward Contracts would make it impossible to trade these contracts on any exchange or market on which futures contracts are traded. (BOMA Ex. 3.0, pg. 24, ll. 553-556). CES witness Dr. O'Connor and Commission Staff witness Mr. Zuraski agreed with Dr. Laffer that the Supplier Forward Contracts are not futures contracts. (Joint Tr., pg. 246, ln. 20 to pg. 247, ln. 2; pg. 1305, ll. 2-7; Tr., pg. 399, ln. 15 to pg. 400, ln. 10).

BOMA further contends that Ms. Juraceks's characterization of the auction price as an exchange traded or market traded index is an absurd interpretation of Section 16-112(a) of the PUA. (BOMA In. Br., pp. 23-24).

Commission Analysis and Conclusion

Section 16-112(a) of the Act provides, in relevant part, that market value shall be determined in accordance with a tariff that provides for a determination of the market value for electric power and energy as a function of an exchange traded or other market traded index, options or futures contract or contracts applicable to the market in which the utility sells, and the customers in its service area buy, electric power and energy. (220 ILCS 5/16-112(a)).

No party has contended that the Supplier Forward Contracts are not applicable to the market in which ComEd sells, or ComEd's customers buy, electric power and energy. The issues, then, are whether the Supplier Forward Contracts are exchange traded or other market traded futures contracts, or whether the auction price is an exchange traded or other market traded index within the meaning of Section 16-112(a).

The Commission is of the opinion and concludes that the Supplier Forward Contracts resulting from the auction are not exchange traded or other market traded futures contracts and the auction price is not an exchange traded or other market traded index. Therefore, neither the Supplier Forward Contract nor the auction price may be used as a determinant of market value under Section 16-112(a) of the PUA. Accordingly, we find that ComEd's proposed Rider PPO-MVM violates Section 16-112(a).

The Commission concludes that ComEd must either continue to offer its currently effective Rider PPO-MI or offer a PPO in which the market value is determined under the neutral fact finder process in order to comply with Section 16-112(a) of the PUA.

X. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having reviewed the entire record herein, is of the opinion and finds that:

1) ComEd's proposed descending clock, uniform price auction violates the least cost requirement of the Public Utilities Act (220 ILCS 5/8-401);

2) ComEd should implement BOMA witness Dr. Laffer's descending clock, pay as bid approach as ComEd's method of procuring its full requirements for electricity supply beginning January 1, 2007;

3) By allowing the price to continue to tick down below ComEd's "market clearing" price, Dr. Laffer's pay as bid approach will result in a more competitive auction and therefore the lowest possible market-determined charges to consumers;

4) Bidders should not be informed when the amount of supply equals ComEd's full electricity supply requirements;

5) Informing bidders of the excess supply in the auction would likely result in a higher, auction price and therefore bidders should not be informed of the amount of excess supply remaining during the auction;

6) Auction bid prices should tick down in equal decrements because a price that ticks down based on the amount of excess supply remaining in the auction as ComEd has proposed provides bidders with information that facilitates implicit collusion on a high auction price;

7) Bidders should be allowed to bid to supply tranches of supply in lower priced rounds even if they had not bid to supply the particular tranches of supply in earlier, higher priced rounds;

8) The 400 kW – 1 MW and 1 MW – 3 MW customer classes, like smaller customer classes, have not been declared competitive and these customers should therefore be offered a rate with the same price volatility mitigation that ComEd proposes for its other customer classes;

9) The use of a customer supply group migration risk factor by ComEd in the CPP-B auction price translation mechanism is ill-conceived and will unfairly shift costs to larger non-residential customers;

10) ComEd should make the CPP-B auction product available to customers in the 400kW - 3 MW customer class and ComEd should not include a customer supply group migration risk factor in the CPP-B auction price translation mechanism;

11) Rider ISS will continue to be necessary post-2006 because none of ComEd's post-2006 proposed tariffs will adequately replace Rider ISS unique function and therefore ComEd should continue to offer Rider ISS;

12) "Rate shock" resulting from approval of the auction is an important ratemaking consideration;

13) Non-residential space heating customers are particularly vulnerable to excessive rate increases post-2006;

14) Staff's rate mitigation plan can be structured to include a separate subgroup for non-residential space heating customers;

15) BOMA's nonresidential space heat plan (i.e., to exempt these customers from demand charges on electricity used for space heating) would continue the treatment of nonresidential space heat customers that was begun nearly three decades ago when Rider 25 was first instituted;

16) BOMA's nonresidential space heat plan will not adversely impact either the competitive retail electric market or the auction's results;

17) ComEd's proposed Rider PPO-MVM does not determine its market value in a manner which meets the requirements of Section 16-112(a) of the Public Utilities Act. (220 ILCS 5/16-112(a));

18) ComEd must continue its current PPO-MI, or alternatively a PPO determined by a neutral fact finder, post-2006 in order to comply with the Public Utilities Act.

IT IS THEREFORE ORDERED that ComEd is hereby authorized and directed to use Dr. Laffer's proposed pay as bid approach in conducting the CPP auction;

IT IS FURTHER ORDERED that bidders in ComEd auction shall not be informed of the amount of excess supply remaining during the auction or when the amount of supply equals ComEd's full requirements;

IT IS FURTHER ORDERED that the bid decrements in ComEd's auction should tick down in equal decrements;

IT IS FURTHER ORDERED that the CPP-B auction product shall available to customers with peak demands between 400 kW and 3MW;

IT IS FURTHER ORDERED that ComEd shall not include a customer supply group migration risk factor in the CPP-B auction price translation mechanism;

IT IS FURTHER ORDERED that ComEd exempt nonresidential electric space heating customers from demand charges in its delivery services tariffs on electricity used for space heating;

[or if BOMA's nonresidential space heat plan is not adopted then:] IT IS FURTHER ORDERED that ComEd implement Staff's rate mitigation plan and that a separate subgroup shall be created in Staff's rate mitigation plan for all nonresidential space heating customers under 3 MWs;

IT IS FURTHER ORDERED that ComEd's proposed PPO-MVM is rejected;

IT IS FURTHER ORDERED that ComEd must offer its current Rider PPO-MI or alternatively a PPO determined by a neutral fact finder post-2006.

By Order of the Commission the _____ day of _____________, 2005.